

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09 - PLR-128066-02

Date:

July 12, 2002

Re:

Legend

Date 1 =
Grantor =

Trust 1 =

Trust 2 =

Trust 3 =

\$X =
A =
B =
C =
Attorney =
Date 2 =
CPA =
Year 1 =

Dear :

This is in response to your letter dated May 7, 2002, requesting an extension of time under § 301.9100-01 and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the Generation-Skipping Transfer (GST) exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows: On Date 1, Grantor established three irrevocable trusts (Trust 1, Trust 2, and Trust 3), one trust for the benefit of each of Grantor's three children and their respective descendants. Grantor transferred \$X to each trust.

Article II, paragraph A of Trust 1 provides that during the lifetime of A, the trustee may pay to or for the benefit of A or any of A's descendants as much net income and principal of the trust as the trustee deems necessary for support, maintenance, health, and education.

Article II, paragraph B directs the trustee to distribute one half of the principal and any undistributed income of the trust as specifically appointed by A's will and one-half, and any assets not appointed, to A's living descendant's, per stirpes, or if none, to grantor's then living descendant's, per stirpes, provided that any share passing to B be added to Trust 2, if no such trust is then in existence, then retained in a separate trust for B's benefit and any share passing to C be added to Trust 3, if no such trust is then in existence, then retained in a separate trust for C's benefit.

Article III, paragraph A provides that whenever any distribution is directed to a beneficiary who is a grandchild or more remote descendant (beneficiary) of grantor with a reference to the trust provisions of this Article, the trustee is to hold the assets in trust on the terms of this Article.

Article III, paragraph B provides that during the lifetime of beneficiary, the trustee may pay to or for the benefit of the beneficiary or beneficiary's descendants as much net income and principal of the trust as the trustee deems necessary for support, maintenance, health, and education.

Article III, paragraph C directs the trustee to distribute one half of the principal and any undistributed income of the trust as specifically appointed by beneficiary's will and one-half, and any assets not appointed, to beneficiary's living descendant's, per stirpes, or if none, to grantor's then living descendant's, per stirpes, provided that any share passing to B be added to Trust 2, if no such trust is then in existence, then retained in a separate trust for B's benefit and any share passing to C be added to Trust 3, if no such trust is then in existence, then retained in a separate trust for C's benefit.

The terms of Trust 2 and Trust 3 are the same as Trust 1, except that the primary beneficiaries of Trust 2 are B and B's lineal descendants, and the primary beneficiaries of Trust 3 are C and C's lineal descendants.

Grantor relied upon a team of professionals to handle her estate planning project. As a member of that team, Attorney wrote a letter on Date 2 to Grantor, CPA and others, in which Attorney stated he assumed CPA would prepare Grantor's gift tax return. CPA has signed an affidavit acknowledging the receipt of Attorney's letter and an inadvertent failure to prepare a Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1, which also resulted in a failure to timely allocate Grantor's GST exemption.

Grantor requests an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to make allocations of Grantor's GST exemption to Trust 1, Trust 2, and Trust 3.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Estate Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer

and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. Accordingly, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3. See Notice 2001-50.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Grantor is granted an extension of time of 60 days from the date of this letter to make allocations of her available GST exemption, with respect to the Date 1 transfers of \$X to Trust 1, Trust 2, and Trust 3. The allocations will be effective as of Date 1, the date of the transfers to

the trusts, and the gift tax value of the transfers will be used in determining the amount of GST exemption to be allocated to each trust.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. The allocation should be made on a Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 709. A copy is enclosed for this purpose.

Sincerely,
William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter